

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No. 4:05-cv-00329-JOE-SAJ
	)	
TYSON FOODS, INC., et al.	)	
	)	
Defendants	)	
	)	

**MOTION TO INTERVENE**

As provided in Federal Rule of Civil Procedure Rule 24, the State of Arkansas, ex rel. Mike Beebe, Attorney General, and the Arkansas Natural Resources Commission (collectively “Arkansas”) hereby move to intervene in the above-styled proceeding. In support of their motion, they submit the following:

1. This Motion is brought by the State of Arkansas on behalf of itself and as *parens patriae* for the citizens of Arkansas to protect the interests of the State of Arkansas from the irreparable injury that would result should the State of Oklahoma receive the relief requested in its Complaint filed in this action. The Attorney General of Arkansas also brings this Motion on behalf of the Arkansas Natural Resources Commission as the regulatory agency that deals with nutrient management issues in Arkansas.

**I. Background**

2. Arkansas and Oklahoma entered into the Arkansas River Basin Compact (the “Compact”) to address issues of water quality and apportionment in the Arkansas River Basin. As part of the Compact, both States agreed to cooperatively resolve their mutual grievances concerning these issues under the auspices of the Arkansas River Basin Compact Commission

(the “Commission”), in lieu of litigation. Moreover, both States agreed that, as part of this cooperative process, each State would use its authority to address water quality issues within its own borders and would not attempt to regulate affairs within the other State. Arkansas has worked within the framework established by the Compact and the Commission to address issues of water quality in the region, including those potentially raised from the utilization of poultry litter as a natural fertilizer. Arkansas has entered into bilateral agreements with Oklahoma and has taken legislative action that has substantially strengthened Arkansas law with respect to water quality in “nutrient surplus areas.” Ark. Code §§ 15-20-901 *et seq.*; 15-20-1101 *et seq.*; 15-20-1114.

3. Alleging that it is dissatisfied with cooperative efforts, the State of Oklahoma has resorted to unilateral action. Specifically, by the plain language of the Complaint it filed in this action, Oklahoma makes the unprecedented claim that it should be permitted to apply its statutes, common law and administrative regulations to commercial, agricultural operations occurring wholly within Arkansas. In its Amended Complaint Oklahoma seeks to enjoin commercial, agricultural practices lawfully occurring within Arkansas and demands that Arkansas citizens, living and conducting business solely inside Arkansas, should be forced to comply with Oklahoma law. Oklahoma’s action seeks unlawfully to displace Arkansas’ own laws and to attack Arkansas’ farms, farmers, and citizens as a whole who have no voice in Oklahoma politics.

## **II. Arkansas’ Interests and the Impairment Thereof**

4. Both Arkansas and Oklahoma, by negotiating the Compact, committed to collaborate in their efforts to control and reduce pollution in the shared interstate watersheds of the Arkansas River Basin. In so doing, they agreed that the Commission would have the authority to address

interstate pollution control within the Arkansas River Basin, including the shared watershed of the Illinois River Basin. Over time, with increased population, industry, and the like, monitoring programs in both Arkansas and Oklahoma have detected increases in phosphorus compounds, suspended sediments and bacteria within some segments of the Illinois River Watershed.

5. A number of factors have contributed to these increases, including regional population growth and the expansion of local industries in both Oklahoma and Arkansas.

6. Although it is plain that such increases as have occurred in phosphorus compounds have complex causes and multiple sources, Oklahoma has repeatedly, in contravention of good science, common sense, and the law, mentioned only one aspect of the phosphorus issue, and has repeatedly attacked only poultry producers.

7. Oklahoma's principal grievance in this action - regarding appropriate use of poultry litter as a natural fertilizer - is one that Oklahoma was and is required to submit to the Commission for resolution under the terms of the Compact that Oklahoma voluntarily entered and legally promised to uphold

8. In 2003, consistent with the principles of cooperation articulated in the Compact, environmental officials from Arkansas and Oklahoma negotiated a "Statement of Joint Principles and Actions," committing both States to coordinate the monitoring of pollutants and to develop, by 2012, measures for substantially reducing phosphorus and achieving other water-quality goals.

9. Also in 2003, the Arkansas General Assembly revised Arkansas law to designate certain geographic areas as "nutrient surplus areas" and to require for those areas nutrient-management plans designed to protect water quality. See Ark. Code §§ 1520-901, *et seq.*

(Arkansas Poultry Feeding Operations Registration Act); 15-20-1101, *et seq.* (Arkansas Soil Nutrient Application and Poultry Litter Utilization Act); 15-20-1114 (governing potential conflicts between land application of poultry litter and Arkansas water and air pollution control laws).

10. These laws are administered by the Arkansas Natural Resources Commission, which has adopted rules and regulations implementing the nutrient management requirements that address both concerns regarding the protection of watersheds and cost-effective soil fertility and plant growth.

11. Despite the substantial progress achieved by the collaborative efforts of the sister states, Oklahoma abruptly abandoned cooperative efforts to pursue unilateral efforts to control Arkansas farmers through litigation filed in Oklahoma.

12. By its lawsuit, Oklahoma asks this Court to sanction Oklahoma's unprecedented efforts to control the lives and livelihoods of Arkansas citizens by stretching Oklahoma statutory law and common law (which Arkansas farmers had no voice in adopting) to cover conduct occurring wholly within Arkansas.

13. To that end, Oklahoma filed a multi-count complaint against numerous Arkansas companies who contract with thousands of Arkansas farmers.

14. Oklahoma's Amended Complaint alleges that these Arkansas citizens contributed to phosphorus pollution by spreading poultry litter on their land as a fertilizer, acts which resulted in violations of Oklahoma statutes, Oklahoma regulations, and Oklahoma common law principles.

15. By the plain language of its complaint, Oklahoma claims the right to regulate lawful commercial agricultural practices occurring within Arkansas under Oklahoma law, thereby depriving the citizens of Arkansas of the fundamental right to be governed by laws duly enacted by their own elected legislature.

16. Enforcement of Oklahoma law within Arkansas will displace and render meaningless laws enacted by the Arkansas General Assembly and state regulations implementing those laws. Compare Okla. Compl. ¶¶ 1, 69, VI.3, with Ark. Code §§ 1520-901, *et seq.* (Arkansas Poultry Feeding Operations Registration Act); 15-20-1101, *et seq.* (Arkansas Soil Nutrient Application and Poultry Litter Utilization Act); 15-20-1114 (governing potential conflicts between land application of poultry litter and Arkansas water and air pollution control laws).

17. Oklahoma's effort to regulate Arkansas citizens by lawsuit evades the agreed upon processes set forth in the Compact, which require both Arkansas and Oklahoma to present grievances to the Commission for resolution through negotiation and collaboration.

18. Oklahoma's unconstitutional and misconceived effort to control Arkansas by lawsuit, would, if ever sanctioned, have a profound negative effect on the agricultural economy of Arkansas, reduce the tax revenues collected by Arkansas, and severely burden interstate commerce.

19. Bending to Oklahoma's demand that Arkansas farmers comply with both Arkansas and Oklahoma law would excessively burden Arkansans, inhibit economic growth, and damage both local communities and the State as a whole.

20. If successful, Oklahoma's efforts would cause a loss of many jobs and businesses in the Illinois River Watershed region of Arkansas, adversely impacting schools, libraries, social programs, and the health and welfare of all the citizens of Arkansas.

### **III. Lack of Adequate Representation**

21. None of the present parties to this action can adequately represent the interests of the State of Arkansas and its people. The State of Oklahoma has requested far-reaching and unprecedented relief that is directly adverse to the interests of the State of Arkansas. Neither the State of Oklahoma nor the private parties named thus far as defendants in the action can represent Arkansas's sovereign interests. Only the State of Arkansas has the authority to represent its own sovereign interests as well as the interests of its citizens as *parens patriae*.

### **IV. Law**

22. Rule 24(a)(2) of the Federal Rules of Civil Procedure authorizes a party to intervene in a lawsuit as of right when "the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

23. Pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure, anyone may be permitted to intervene in an action "when an applicant's claim or defense and the main action have a question of law or fact in common."

### **V. Conclusion**

24. For the reasons aforementioned, it is clear that the State of Arkansas and the Arkansas Natural Resources Commission have an interest in the proceedings herein and that the

disposition of this matter could significantly impair or impede those interests. It is further evident that none of the entities that are currently parties to this matter can adequately represent the interests of the State of Arkansas.

25. The State of Arkansas has satisfied the standard for intervention of right and accordingly respectfully requests that its motion to intervene be granted. In the alternative, the State of Arkansas respectfully requests that it should be permitted to intervene by leave of the Court.

WHEREFORE, the State of Arkansas and the Arkansas Natural Resources Commission respectfully request that this Court grant their Motion to Intervene and issue an Order directing the Clerk of the Court to file the Motion to Dismiss and Brief in Support thereof accompanying this Motion; and for all other just and proper relief.

Respectfully submitted,

s/William B. Federman

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2006, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

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